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Situation of human rights in Myanmar

Note by the Secretary-General*

Summary

The Secretary-General has the honour to present to the members of the General Assembly the report on the situation of human rights in Myanmar submitted by the Special Rapporteur on the situation of human rights in Myanmar, Yanghee Lee, in accordance with General Assembly resolution 69/248. The present report provides an overview of the main human rights developments in Myanmar since the Special Rapporteur's report to the Human Rights Council in March 2015. It sets out key issues and priorities that need to be addressed to further the reforms in the area of human rights prior to the November elections and beyond.

* Late submission due to country mission to Myanmar from 2 to 7 August 2015.

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Report of the Special Rapporteur on the situation of human rights in Myanmar

I. Introduction

1. The present report, submitted pursuant to Human Rights Council resolution 28/23 and General Assembly resolution 69/248, covers developments in Myanmar since the Special Rapporteur's report to the Council in March 2015 (see A/HRC/28/72).

2. The Special Rapporteur conducted her third mission to Myanmar from 2 to 7 August 2015. Myanmar was dealing with the devastating impact of the floods and subsequent landslides, which resulted in over 110 deaths, severely affected 1.6 million people, and displaced more than 380,000 households. She again conveys her deepest sympathies to all those affected. She continues to be inspired by the solidarity and courage of the Myanmar people and the public's efforts to mobilize, volunteer and provide assistance. She welcomes the Government's response to this crisis and renews her call to the international community to provide assistance to all those in need, particularly as communities rebuild their lives.

3. The Special Rapporteur thanks the Government for its invitation and cooperation with her mandate. She regrets that the Government did not grant a 10-day visit as on previous occasions and that some requested meetings and visits were not granted, suddenly changed or cancelled at the last minute without prior notice. Nevertheless, she remains committed to constructive engagement and cooperation and looks forward to renewing dialogue with government interlocutors on future visits.[1]

4. The Special Rapporteur received information that some individuals with whom she met were photographed by security officials and that interlocutors from previous visits were monitored, photographed and later questioned by security personnel. She reminds the Government of its obligation to ensure the safety of all those who engage with her mandate and to guarantee that they will not be subjected to any form of reprisals, including threats, harassment, punishment or judicial proceedings as required by Council resolutions 24/24 and 12/2 and in the terms of reference for country visits by Special Procedures of the Council. She has been assured by the Minister of Home Affairs that no reprisals will occur in relation to this or future visits.

II. Human rights situation

A. Election

5. The upcoming elections on 8 November will be an important milestone in Myanmar's democratic transition and an opportunity to consolidate and further the reforms. The Special Rapporteur welcomes the repeated assurances made by President Thein Sein, the Chair of the Union Election Commission and other officials that the elections will be free and fair and held in line with international

[1] See "End of Mission Statement" and annex for list of meetings, available from: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16309&LangID=E.

standards. She also notes the statements of the Commander-in-Chief that the military will accept the outcomes of the elections if they are free and fair.

6. The environment and preparations for the elections, as well as their actual conduct, are equally important in determining whether they are transparent, inclusive, participatory, free and fair. The period after the elections, prior to the election of a new President, will also be crucial. The Special Rapporteur notes the Union Election Commission's invitation to international and national organizations to observe the elections and its engagement with civil society. Such measures can enhance transparency and build public confidence in the elections.

7. The Special Rapporteur welcomes measures taken to address some shortcomings of the 2010 elections, including the reduction of candidate registration fees, the establishment of mechanisms for resolving post-election complaints and the reduction of complaint filing fees. It will be vital for the new election dispute mechanism to work transparently and for the procedures and timelines for the review of complaints to be clarified.

8. Of note are the measures on advance voting (commonly acknowledged as one of the main areas of alleged irregularities in 2010), including the requirement that advance votes be submitted to polling stations before 4 p.m. and that observers monitor the count. The Special Rapporteur welcomes assurances that access to polling booths in military sites will be granted to observers (subject to the agreement of the respective military command). In the absence of such an agreement, the Chair of the Union Election Commission stated that polling booths will be placed outside military sites. Additionally, access should be granted to observe all aspects of advance voting, whether in or out of constituency.[2]

9. Several interlocutors highlighted the low levels of understanding of the electoral process among the public. The Special Rapporteur also notes the low number of women candidates nominated by political parties. This is of concern given the already severe underrepresentation of women in Government and the current Parliament (6.2 per cent in the Lower House and 1.9 per cent in the Upper House).[3] Additionally, 6 of the 14 state and regional legislatures have no female members. The Special Rapporteur therefore welcomes voter education programmes organized by civil society, including those aimed at enhancing women's political participation. Such programmes should be expanded throughout Myanmar. Also, as party to the Convention on the Elimination of All Forms of Discrimination against Women, Myanmar should do more to eliminate discrimination and gender stereotypes and promote women's participation in public and political life (see A/69/398, para. 16).

10. To be truly free and fair, the elections must be inclusive and must reflect the will of the people. In this respect, the Special Rapporteur notes the efforts of the Union Election Commission to update and correct voter rolls, including through public displays at different stages. In the light of the floods, the final display of the voter list was rescheduled to 14 to 27 September, with an extension of the deadline in certain flood-affected areas. The Union Election Commission also announced that

[2] The Carter Center, "Preliminary Findings of the Carter Center Expert Mission to Myanmar: April-July 2015", 19 August 2015. Available from: www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/myanmar-081915-en.pdf

[3] Data compiled by the Inter-Parliamentary Union as of 1 September 2015.

those who had lost identity documentation in the floods could still vote, including through the issuance of voter registration cards. At the same time, many actors conveyed continuing concerns regarding errors in voter lists. The onus is on the individual voter to review the list and provide corrections, including through supporting documentation. The Special Rapporteur believes that this may pose difficulties, particularly for those who have been affected by the floods. Thus, other measures should be envisaged for corrections and updates to be made to the voter lists.

11. In preliminary candidate lists announced on 20 August, there are 6,189 candidates, including 323 independents, who are standing for election for 1,171 seats in the national and regional/state legislatures. Among the reported 124 candidates recently disqualified from standing for election, several candidates were rejected on the basis that one or both of their parents were not citizens. This includes parliamentarians Win Myint and Shwe Maung (a Rohingya running as an independent), whose appeals were reportedly dismissed. The highest number of disqualified candidates are from Rakhine State, with many Muslim candidates among them. Eligibility criteria for candidates include the requirement that those standing for election to Parliament be citizens born of citizens (see A/69/398, para. 13).[4] Yet, under international standards, the right to stand for election may be limited only on the basis of objective and reasonable criteria. Disqualifications should not be based on unreasonable or discriminatory requirements such as residence or descent. While welcoming the decision of the Union Election Commission to reinstate 11 candidates, including 10 previously disqualified on citizenship grounds, the Special Rapporteur believes that additional and thorough reviews of all disqualifications remain necessary.

12. She reiterates concern regarding the amendments to the Political Parties Registration Law, which provides that only "full citizens" are allowed to form political parties; and that only "full citizens" and "naturalized citizens" are allowed to be members. The Political Parties Registration Law of 2010 previously allowed temporary registration card holders to form and become members of political parties. The term "association" includes political parties. The right to form and join an association is an inherent part of the right to freedom of association, which is a right that everyone is entitled to exercise (see A/HRC/20/27, paras. 52-54).[5] Therefore, the Special Rapporteur recalls that in the exercise of their freedom of association, non-citizens can be members of political parties.

13. Of grave concern is the disenfranchisement of some 760,000 individuals who previously held temporary registration cards. This includes individuals of Chinese and Indian descent but mainly Rohingya in Rakhine State, who had the right to vote in the 2010 and 2012 elections. On 11 February 2015, President Thein Sein issued a notification announcing the expiry of all existing temporary registration cards on 31 March,[6] and requiring the submission of expired documents by 31 May.[7] On 17 February, the Constitutional Tribunal ruled that Parliament's approval of a Referendum Bill allowing all categories of citizens, as well as temporary

[4] Articles 120 and 121 of the Constitution (2008).

[5] Article 20, Universal Declaration of Human Rights.

[6] Presidential Notification No. 19/2015, para. 2, carried out pursuant to rule 13 (3) of the 1951 Residents of Burma Registration Rules.

[7] Ibid., para. 3, carried out pursuant to rule 13 (4) of the 1951 Residents of Burma Registration Rules.

registration card holders, to vote in an upcoming referendum was unconstitutional. On 2 June, the Government announced that those who had submitted their temporary registration cards (some 469,000 by the deadline) were eligible to apply for new identity cards "for those whose nationality will be scrutinized". The Chair of the Union Election Commission stated that holders of these new cards would not be allowed to vote. Given its disproportionate impact on minority communities, in particular the Rohingya, the Special Rapporteur believes that the decision to disenfranchise former temporary registration card holders is discriminatory. The Special Rapporteur is also concerned by the possible exclusion of thousands of other individuals across Myanmar society, including migrant workers, other workers living abroad, internally displaced persons and refugees who face specific challenges in registering to vote and accessing polling stations. The Union Election Commission has addressed some of these concerns, including by updating voter lists to include internal migrants or displaced persons who can show temporary residence in a particular constituency or area for at least 180 days (as provided under the election laws). Yet, these measures would not fully cover those who do not possess the required documentation or who have been newly or repeatedly displaced as a result of natural disasters or conflict. More proactive measures should be taken, in consultation with the affected communities.

14. The Special Rapporteur is further concerned by the possible disenfranchisement of those living in conflict areas, where elections may be cancelled for security reasons. This includes Kachin and Northern Shan States, including the Kokang Self-Administered Zone, as well as areas affected by natural disasters, such as Chin State. She notes statements made by the Chair of the Union Election Commission that decisions on cancellation would be made public only one or two weeks before the elections. She urges that clear criteria be outlined well in advance for the cancellation of elections.

15. Several interlocutors conveyed concern regarding the potential increase in hate speech against religious minorities and the political manipulation of communal tension. The Special Rapporteur thus welcomes measures, such as the development in June 2015 of a code of conduct for political parties. It includes provisions against the use of campaign messages which fuel "regionalist, racial, sectarian or tribal trends that could threaten national unity" and the abuse of religion for political purposes. She also notes the efforts to cooperate with Facebook to remove posts and accounts that may incite violence. At the same time, she is concerned by statements from the Committee to Protect Race and Religion (MaBaTha) urging voters to elect only national ethnic candidates, or choose candidates who will "protect Buddhism". Action must be taken against those who "abuse religion for political purposes", which is prohibited under the 2008 Constitution (article 364), and who urge anyone to vote or not vote on religious grounds, which is prohibited under article 58 (c) of the Amyotha Hluttaw and Pyithu Hluttaw Election Laws.

16. According to the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the freedom of political parties to expression and opinion, particularly through electoral campaigns, is essential to the integrity of elections (A/68/299, para. 38). Parties should have equal access to the media, particularly state-owned or controlled (ibid., para. 39). The Inter-Parliamentary Union's Declaration on Free and Fair Elections, provides that States should ensure that "parties and candidates are free to communicate their views to the electorate".

17. In this respect, the Special Rapporteur notes that political parties will be able to run 15-minute campaign broadcasts on Myanmar's national radio and television channels, although full transcripts of broadcasts are to be submitted in advance to the Union Election Commission and the Ministry of Information for approval. Broadcasts deemed to negatively impact security, the rule of law, the dignity of the armed forces, or racial, religious or individual rights or laws, for example, will not be approved. Rules for the campaign period are similarly restrictive, requiring advance permission for public events outside party premises and imposing similar limitations on the content of campaign materials and advertisements. The Special Rapporteur highlights that the grounds for rejecting campaign materials appear overly broad and could result in arbitrary decisions infringing on the right to freedom of expression.

B. Democratic space

18. Genuine elections cannot be achieved if the rights to freedoms of expression, peaceful assembly and association are curtailed. In this regard, the Special Rapporteur is concerned by ongoing restrictions on these rights; continuing arrests and convictions of persons attempting to exercise these rights; excessive use of force against protestors; and increasing intimidation, harassment, monitoring and surveillance of human rights defenders and civil society actors. Such trends undermine democratic space, and risk excluding some independent voices from public debate ahead of the elections.

19. On 31 July, a presidential pardon led to the release of 6,966 prisoners, including an estimated 13 political prisoners. Among these were the five staff from the *Bi Mon Te Nay Journal* and Sein Than, a land rights activist, whose cases have been previously raised by the Special Rapporteur. Yet, according to civil society, 108 convicted political prisoners remain behind bars, while 459 others await trial.[8] The Special Rapporteur met some of these prisoners and was inspired by their commitment to contribute to Myanmar's future.

20. Since her last report to the Council, the Special Rapporteur has observed the continued arrests and convictions of civil society actors, students, farmers, factory workers, journalists and ordinary people under laws which do not conform to international human rights standards. According to the Working Group on Arbitrary Detention[9] legal provisions incompatible with fundamental rights and freedoms guaranteed under international human rights law would give rise to qualification of detention as arbitrary (see A/HRC/22/44, para. 65). Numerous individuals have been detained under the Peaceful Assembly and Peaceful Procession Law (Peaceful Assembly Law). The Special Rapporteur has previously highlighted concerns regarding this law, including the requirement for prior authorization (the violation of which can result in up to six months' imprisonment); the burdensome application process; the denial of a right to appeal if permission is refused; and the imposition of criminal sanctions for breaches of the law.

21. Penal Code provisions, which are non-bailable offences, are increasingly used against those engaged in peaceful protests. These include sections 143 and 145,

[8] Figures provided by the Assistance Association for Political Prisoners (Burma).

[9] See E/CN.4/2005/6/Add.1.

which provide from six months to two years' imprisonment against anyone participating in an unlawful assembly. Sections 146 and 147 prohibiting rioting have also been used. These provisions contravene international standards as they allow any member of an assembly where violence occurs to be prosecuted for rioting, irrespective of any actual involvement with the violence. Section 505 (b), which provides for up to two years' imprisonment for anyone inciting the public to commit broad and vague offences such as those "against the State or the public tranquillity", is also frequently used. The Special Rapporteur calls on the Government to bring these sections of the Penal Code and the Peaceful Assembly Law in line with international human rights standards and to release those arbitrarily detained under these provisions.

22. Additionally, in some cases, individuals face charges in different townships for the same offence and are forced to undergo multiple trials concurrently. In other cases, charges for past offences are suddenly brought and additional sentences imposed on those already in detention. In this regard, the Special Rapporteur is concerned that Naw Ohn Hla and Nay Myo Zin received additional four months' sentences in Kyauktada Township (September 2015), Ahlone township (August 2015) and in Latha Township (July 2015) for protesting in front of the Chinese Embassy against the Letpadaung Copper mine and the fatal shooting of Daw Khin Win in December 2014. They were previously sentenced to four years and four months in prison for the same offence in May 2015 by the Dagon Township Court. In June, Naw Ohn Hla received an additional six-month sentence for an old and unrelated offence, the holding of a prayer session in 2007 for the release of Aung San Suu Kyi.

23. The violent police crackdown on those protesting against the National Education Law and their supporters on 10 March 2015 in Letpadan vividly illustrates the above concerns. In interviews with five protestors detained in Tharawaddy prison, one info rmed the Special Rapporteur that he had 11 charges levelled against him for a single protest. Among the 127 individuals arrested, 53 remained in pretrial detention as of 1 September. Under international law, pretrial detention should be the exception rather than the rule. It must be based on an individualized determination that is reasonable and necessary taking into account all circumstances. The authorities stated that they granted bail to those who could prove they were genuine university students. Others, including former political prisoners prohibited from attending university who are following distance education programmes, remain in detention. The Special Rapporteur emphasizes that this should not be a valid criteria for denying bail.

24. At the time of writing, over 75 of those arrested on 10 March face charges under the aforementioned provisions of the Penal Code and the Peaceful Assembly Law. Those detained for exercising their right to peaceful assembly, under provisions which do not comply with international standards, can be considered to have been subject to arbitrary detention. There are also concerns about the slow pace of trial. After four months of trial, with hearings held once a week, the court still has 40 government witnesses to hear. At the current pace, the trial will last two years. Persons arrested or detained on a criminal charge are entitled to trial within a reasonable time or to release.

25. The Special Rapporteur also received allegations of excessive use of force by the police in handling the Letpadan protest and in making arrests. The police deny

these accusations. A lawsuit brought by several protestors against two police officers was dismissed in August 2015. The Myanmar National Human Rights Commission met some detainees following a petition brought by students involved in the protests. The Special Rapporteur welcomes the call from the Commission for legal action against police officers who breached procedures and its recognition that disproportionate charges have been brought against protesters.[10]

26. Allegations of excessive use of force by the police were also received regarding the dispersal of a solidarity protest with the students on 5 March 2015 in Yangon. The Special Rapporteur is concerned that civilians wearing red armbands allegedly assisted the police in making arrests, based on provisions of the Code of Criminal Procedure, which allow the use of civilians to break up assemblies.[11] The report of a Commission of Inquiry appointed by the Government to look into the incident in Yangon has not yet been made public.

27. Journalists and media personnel continue to face legal action under defamation, harassment, trespassing and national security laws that are inconsistent with international human rights standards. In July 2015, two editors from the *Myanmar Herald* were found guilty of defamation, after running an interview containing remarks critical of President Thein Sein. In March, two journalists from the *Myanmar Post* were sentenced to two months in prison for defamation. Several journalists from the Eleven Media Group are still facing prosecution for defamation for publishing critical views about the proposed Public Service Media Bill. Additionally, the killing of freelance reporter Ko Par Gyi in October 2014 and the attack on the Eleven Media Chief Executive Officer in July 2015 create fear and uncertainty within the media. The Special Rapporteur notes information received from the Government that three people were charged in connection with this attack. She reiterates that journalists and media workers contribute to public debate and are vital for democratic societies. They have an even more crucial role prior, during and after elections. Freedom of expression and independent journalism, uninhibited by fear of legal reprisals or intimidation, must be ensured. The Special Rapporteur notes the withdrawal of the Public Service Media Bill from consideration by Parliament in March 2015. While concerns had been raised over some aspects of the bill, its withdrawal means that state-owned media will remain without editorial independence during the electoral period.

28. The Special Rapporteur is concerned by the increased monitoring, surveillance, intimidation and harassment of human rights defenders and civil society actors by military intelligence and the Special Branch Police in charge of intelligence. Individuals are followed and photographed at meetings. Their families, friends and colleagues are questioned about their whereabouts and some face difficulties accessing e-mail accounts, which they attribute to surveillance. Women human rights defenders are particularly vulnerable to sexual harassment and intimidation.

29. One tool used against civil society and political activists is the Ward or Village Tract Administration Law. Adopted in 2012, the law mirrors two archaic laws of 1907 requiring individuals to report the identity of their overnight guests to ward or village administrators. The law empowers these officials to conduct periodic household inspections to determine if unregistered guests are present. Often called

[10] Myanmar National Human Rights Commission, Statement 12/2015, 11 September 2015.

[11] Code of Criminal Procedure, articles 127 and 128.

"midnight inspections", these visits are used to intimidate or harass civil society activists. The Special Rapporteur calls on the Government to halt all forms of surveillance and harassment against human rights defenders and members of civil society and ensure respect for their rights to freedoms of expression, peaceful assembly and association.

C. Incitement

30. The protection of the right to freedom of expression must be accompanied by efforts to combat intolerance, discrimination and incitement to hatred. While welcoming President Thein Sein's statements against hate speech, the Special Rapporteur continues to observe calls, often made by religious leaders or members of political parties, to incitement and hatred against minorities. They involve negative stereotyping and discrimination and largely target Muslim communities, especially the Rohingya. She is also concerned by the increasing influence of Buddhist ultra-nationalist movements in fuelling discriminatory sentiments and advocating support of discriminatory policies or legislation. She also notes reports of intimidation and harassment of civil society actors, political figures and journalists who seek to protect the rights of minorities. Greater efforts must be made to publicly condemn, prevent and combat acts of incitement to discrimination, hostility and violence. It is vital that deep-seated divisions and tension are not manipulated for political purposes or used to fuel violence ahead of the elections.

31. During her visit, the Special Rapporteur expressed concern about a video on the Internet[12] of a public rally where the Chair of the Peace and Diversity Party called for the killing of the Rohingya. Referring to the Rohingya, the Chair stated: "Number one, shoot and kill them! Number two, kill and shoot them! Number three, shoot and bury them! Number four, bury and shoot them! If we do not kill, shoot, and bury them, they will keep sneaking into our country." The crowd can be heard repeating these statements. To the knowledge of the Special Rapporteur, the Government has not publicly condemned these statements and no legal action has been initiated against their author. She also raised the case of Htin Lin Oo who was sentenced to two years in prison with hard labour in June 2015 under section 295 (a) of the Penal Code for "insulting" religion or religious belief. Htin Lin Oo was convicted for a speech discouraging the use of Buddhism as a tool for nationalist extremism. The Special Rapporteur notes with concern the stark difference in treatment between these two cases.

32. According to the Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression (see A/67/357, paras. 45 and 46) and on minority issues (see A/HRC/28/64, paras. 48 and 58), several elements should be considered when identifying which expressions constitute incitement: the context of the expression; the official position and level of authority of the speaker; the intent to incite discrimination, hostility or violence; the content of the expression; the extent and means of dissemination; the danger of violence resulting from the expression. Serious and extreme instances of incitement to hatred, which cross this threshold, should be criminalized. For other cases, the Government should adopt civil laws which can provide for diverse procedural and substantive remedies (see

[12] https://www.youtube.com/watch?v=O59n9M6jB28.

A/67/357, para. 48). However, such measures should not impose additional restrictions on the rights to freedom of expression, assembly and association.

33. Communal tension and hatred cannot be eliminated by legal provisions alone. Root causes should be addressed, including through the deconstruction of discriminatory and negative stereotypes and the promotion of greater tolerance. Preventative measures should be prioritized, including through education, information campaigns, training for judges and law enforcement officers, and social dialogue. The Special Rapporteur therefore welcomes President Thein Sein's instructions in 2014 calling on local authorities to establish interfaith organizations to improve dialogue and understanding between communities. Such organizations should be established widely and reinvigorated wherever inactive. The Special Rapporteur also welcomes various interfaith activities led by religious leaders or civil society actors aimed at promoting intercommunal harmony and building a more tolerant and inclusive society.

D. Rakhine State

34. The Special Rapporteur regrets that her request to visit Rakhine State was denied by the Government, well before the start of her mission. While she firmly believes in making assessments based on the realities observed on the ground, she welcomed the opportunity to engage constructively with the Chief Minister, members of the Emergency Coordination Centre, as well as some of the Rakhine Elders. She is aware, however, that they were brought to Yangon despite dealing with a natural disaster.

35. Rakhine State, declared one of four disaster zones, was among the hardest hit by the floods. The Special Rapporteur urges that continued assistance and support be provided as a priority. The floods will likely exacerbate the long-standing social and economic development challenges in Rakhine State, one of the poorest States in Myanmar.

36. One priority area the Special Rapporteur would like to stress is improving education opportunities and access to higher education for all communities in Rakhine State. According to the United Nations Committee on Economic, Social and Cultural Rights, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty.[13] Thus, efforts can be made to increase the number of primary and secondary schools Statewide, which currently are overcrowded and underresourced, and to provide greater access to non-formal education and vocational training. Access to education (particularly at the middle and secondary levels), for displaced youth and children in camps should be improved. Lifting travel restrictions, which have prevented Rohingya students from attending any form of university education, is also necessary.

37. Three years after the first outbreak of communal violence in Rakhine State, some 140,000 displaced persons remain in camps[14] where conditions remain abysmal and access to adequate basic services severely limited. Acute malnutrition

[13] See E/C.12/1999/10, general comment No. 13: the right to education, para. 1.

[14] http://reliefweb.int/sites/reliefweb.int/files/resources/Affected_Map_IDP_Sites_Rakhine_OCHA_Aug2015_A4.pdf

in children under five continues to be a serious concern among vulnerable communities. The majority of adolescents lack access to quality formal or non-formal education opportunities.[15] Between March and June 2015, the Government assisted with the return and relocation of some 10,000 individuals, including the provision of cash grants or building materials for the construction of housing. Another 4,000 families received similar assistance from international actors. Additional returns and resettlements are envisaged, although exact time frames remain unclear, particularly because of the floods. It is also unclear what will happen to the more than 90,000 individuals in camps around rural Sittwe. The Special Rapporteur reiterates the importance of finding durable solutions to displacement, including voluntary returns to places of origin. She notes assurances by local authorities that returns and resettlement are not linked to participation in the citizenship verification process, which should also be conveyed to the affected population. She hopes that durable solutions will be found for all displaced persons, in line with international principles. Permanent segregation of communities must be avoided.

38. There have been no new incidents of communal violence reported during the past year. The Government reports trade and business between communities in Buthidaung and Maungdaw. In the immediate aftermath of the floods, increased positive interactions between the two communities and improvements in freedom of movement were reported. Nevertheless, the Special Rapporteur finds no major improvement in the human rights concerns previously highlighted, in particular the long-standing and institutionalized discrimination against the Rohingya community.

39. Rohingya continue to face restrictions on their freedom of movement, which severely impact their access to health care, food, water, sanitation, education and livelihoods. Discriminatory and restrictive local orders continue to be applied in the north of Rakhine State. For example, curfews are still imposed, as well as restrictions on gatherings of more than four people. Permission is required for travel between townships. Permission is also required for Rohingya couples to marry, often with a two-child limitation for couples. Children born of unwed parents, parents who did not obtain permission to marry or parents who had more than the allowed number are often deregistered or "blacklisted" with negative impact on their ability to enrol in government schools and obtain identity documentation.

40. Rohingya also remain vulnerable to other human rights violations, including sexual and gender-based violence, arbitrary arrest and ill-treatment, with inadequate action taken to investigate and prosecute the perpetrators. Additionally, while the Special Rapporteur welcomes the release in July 2015 of some 62 Rohingya (arrested in connection with the 2012 violence and sentenced to from 5 to 20 years in prison without proper investigation), she reiterates her concern at the lack of independent and credible investigations into allegations of violations committed during the incidents of June and October 2012, and January 2014.

41. There has also been little progress on resolving the legal status of the more than one million Rohingya in Myanmar, including their access to citizenship. The citizenship verification process, first piloted in Myebon Township in June 2014, has effectively stalled. A reported 892 applications have been sent to the Government since January but those granted citizenship remain in camps and continue to face

[15] United Nations Office for the Coordination of Humanitarian Affairs, *Humanitarian Bulletin, Myanmar*, Issue 5, May/June 2015.

restrictions on their freedom of movement and access to basic services. On 15 June, the Deputy Minister for Immigration and Population stated in Parliament that their movement was being restricted "for their own safety". The Special Rapporteur had previously raised concerns regarding this process in the light of the designation of ethnicity (reportedly "Bengali", "Kaman" or nothing at all) on the forms and the potential arbitrary exclusion of those who self-identify as Rohingya (see A/69/398, para. 52). She had also raised concerns that this exercise is based on the 1982 Citizenship Law, which is not in line with international standards and should be reformed.

42. Following the expiration of the deadline on 31 May 2015 discussed in paragraph 13 above, an estimated 486,183 temporary registration cards were surrendered. The announcement in June 2015 of new identification cards for citizenship verification has not seen large numbers of applications, particularly from the Rohingya community. The rights and entitlements associated with these new cards, valid for two years, also remain unclear. There are reports of local authorities exercising pressure on village and religious leaders, as well as community members, to accept the new cards. Threats of increased restrictions as well as actual additional travel restrictions were also reported.

43. The cumulative negative impact of restrictions, deteriorating living conditions and poverty is a key catalyst driving refugee and irregular migration flows to other countries in the region. Tens of thousands have made the dangerous voyage by sea, particularly since the eruption of communal violence in 2012. A reported 31,000 people (including many Rohingya) departed in the first half of this year alone.[16] Between January 2014 and June 2015, more than 1,100 are believed to have perished owing to the precarious voyage and mistreatment by traffickers and smugglers.[16] Smuggling and trafficking rings have grown with reports of the alleged collusion of local authorities in various countries.

44. Following recent international attention on the migration crisis in the Bay of Bengal and the Andaman Sea in April and May 2015, the Government of Myanmar stepped up search and rescue efforts on humanitarian grounds. Two boats with over 900 people from Myanmar and Bangladesh were rescued in May. Following verification, about 195 Rohingya were returned to their homes in Rakhine State without repercussions. Eight Rohingya men initially detained upon disembarkation (apparently without formal charges) were later released and returned home. Verification of the remaining individuals continues and some repatriations to Bangladesh have taken place.

45. The Special Rapporteur notes the Government's commitment to addressing this issue from a regional perspective. She also notes that 30 individuals have recently been charged in Myanmar's first anti-trafficking case. However, a comprehensive human rights response, which would address the root causes and push factors behind such migration flows, is also required. The Special Rapporteur calls on the Government to make greater efforts to revise discriminatory laws and policies and resolve questions regarding legal status and access to citizenship. This is the only sustainable solution for peace and reconciliation in Rakhine State.

[16] United Nations High Commissioner for Refugees, "Southeast Asia: Mixed maritime movements, April-June 2015".

E. Conflict and Peace Process

46. The Special Rapporteur remains concerned about the impact of ongoing conflict in parts of Myanmar. In the Kokang Self-Administered Zone, the conflict between the military and the Myanmar National Democratic Alliance Army (MNDAA), the Ta'ang National Liberation Army and the Arakan Army has resulted in some 70,000 displaced persons. Access to the area, including for humanitarian actors, remains severely restricted. While there is no accurate data, civil society sources allege various conflict-related violations. Martial law and a state of emergency were declared in Kokang on 17 February 2015 and now extended until 17 November. While the MNDAA declared a unilateral ceasefire on 11 June and the three armed groups involved in the conflict announced their willingness to engage in ceasefire negotiations, armed clashes continue. It is unclear at this stage whether elections can be held in Kokang as the state of emergency and martial law will still be in force.

47. The ongoing conflict in Kachin State and Northern Shan State has resulted in the displacement of more than 100,000 people. Many displaced persons have resided in camps for more than four years. Humanitarian access to non-government areas remains limited, with the United Nations and other humanitarian actors often waiting months for official authorizations. Access is also particularly difficult for Laiza, where half of the displaced in non-government controlled areas, are located. National and local community and civil society groups, often with limited resources and capacity, continue to provide much-needed assistance in these areas.

48. Intense fighting between the military and the Kachin Independence Army in July and August 2015, including the reported heavy aerial bombardment and shelling of several villages, has resulted in the displacement of some 1,400 civilians in Sumprabum Township in Kachin State. Humanitarian access continues to be blocked.

49. The Special Rapporteur reiterates that States have an obligation to uphold fundamental human rights, even during a state of emergency. The rights and needs of those displaced and affected by the conflict must be addressed as a matter of priority. The United Nations and its partners should have regular, independent and predictable access to all those in need of humanitarian assistance.

50. The Special Rapporteur continues to receive allegations of violations committed by all parties to the conflict, including attacks against civilians, forced recruitment and forced labour, as well as sexual violence. Although Myanmar endorsed the Declaration of Commitment to End Sexual Violence in Conflict in June 2014 and the Government has a zero-tolerance policy for sexual misconduct by its military personnel, there continues to be a high level of impunity for conflict-related sexual violence perpetrated by State actors and a lack of transparency in military courts.[17]

51. During the Special Rapporteur's visit, many interlocutors expressed continuing concern regarding the lack of accountability for violations allegedly committed by the military. When conducted, official criminal investigations were seen as flawed and not credible. In this regard, references were made to the fatal shooting of Ja Seng Ing, a 14-year-old Kachin girl, in 2012, as well as the rape and

[17] S/2015/203, paras. 41 and 42.

murder of Maran Lu Ra and Tangbau Hkwan Nan Tsin, two female Kachin teachers, on 19 January 2015 (see A/HRC/28/72, paras. 58 and 59).[18] Reference was also made to the alleged attempted rape of an elderly woman in Kachin State in April 2015 for which the accused, a soldier, was sentenced by military court to seven years in prison for "misconduct which could lead to suspicion and mistrust between the Tatmadaw [Myanmar Armed Forces] and the people" but not for attempted rape.

52. The Government should ensure that prompt, thorough, effective, independent and impartial investigations are conducted into all allegations of human rights violations. Perpetrators should be prosecuted and punished with appropriate penalties. Victims should be provided with redress. The Special Rapporteur notes with concern that persons making allegations against the military are threatened or subject to criminal proceedings for defamation or providing false information (see A/HRC/28/72, para. 59). The conviction in February 2015 of Brang Shawng, Ja Seng Ing's father, for making "false allegations" against the Myanmar army is particularly worrying (ibid., para. 58).

53. The Special Rapporteur welcomes the Government's signature of the Optional Protocol to the Convention on the Rights of the Child on children and armed conflict in September 2015. She also welcomes efforts made to implement the 2012 Joint Action Plan to end and prevent the recruitment and use of children in armed conflict. In June 2015, the military discharged 51 underage recruits bringing the total released this year to 93. Since the signing of the Joint Action Plan, 646 minors have been discharged from the military. She also welcomes the engagement with the Special Representative of the Secretary-General on children and armed conflict who visited Myanmar in July 2015.

54. Yet, the recruitment and use of children in the military, border guard forces and in non-state armed groups continues. Additionally, the continued detention of children as "deserters" remains a concern and age verification measures prior to arrest are not institutionalized. The Special Rapporteur urges the Government to address these concerns, and to accelerate the identification, release and reintegration of all children in the armed forces. The Government should also strengthen age verification and monitoring and oversight mechanisms for recruitment, and ensure that all those responsible for child recruitment and use are brought to justice. Similarly, she calls on all armed groups to end and prevent the recruitment and use of children. Additionally, the revised draft Child Law should criminalize the recruitment and use of children in the armed forces and armed groups and include appropriate penalties.

55. The Special Rapporteur has followed the negotiations between the Union Peace-Making Working Committee and the Nationwide Ceasefire Coordination Team, and its Senior Delegation. She notes that a draft Nationwide Ceasefire Agreement was signed on 31 March 2015, although final signature has not yet taken place. While most points of contention have been resolved, the inclusion of all ethnic armed groups as signatories remains pending.

56. The Special Rapporteur reaffirms that a comprehensive ceasefire agreement based on international human rights principles is an essential precursor for sustainable peace. She welcomes the inclusion of important principles of equality

[18] Although police identified two local villagers as suspects with regard to the latter case in July 2015, no arrests have been made.

and non-discrimination, as well as justice, and the right to self-determination throughout the draft Nationwide Ceasefire Agreement. Among the guiding principles are provisions on establishing a secular State to avoid the "inappropriate use of religion in political matters" and a democratic and federal union embracing its diverse ethnic makeup. She welcomes the commitments on civilian protection and the voluntary return of displaced persons, which address concerns raised by successive Special Rapporteurs. Provisions relating to the envisaged inclusive political dialogue will hopefully ensure the participation of ethnic representatives and civil society organizations and the inclusion of a "reasonable number of women representatives".

57. The Special Rapporteur observes that while the draft Nationwide Ceasefire Agreement lacks specificity, it covers a range of human rights concerns and issues. She received assurances that human rights issues will be fully discussed in any subsequent political dialogue. Nevertheless, many civil society actors and members of ethnic groups remain concerned about the draft agreement and sceptical of the peace negotiations. Firm commitments should be made and processes established to ensure accountability, equality and non-discrimination, as well as respect for the rights of minorities, after the ceasefire is achieved. Full consultation with local communities and civil society, and their full participation in any future political process, should be ensured. This would foster greater confidence and a sense of shared ownership in the process. Complex issues related to accountability for past and present human rights violations, discrimination and historically entrenched inequalities, as well as land and natural resource rights issues, which lie at the heart of decades of conflict, must be addressed in any subsequent political dialogue.

58. The Special Rapporteur recalls that successive Security Council resolutions have reiterated the importance of women's equal and full participation in all stages of peace processes.[19] While noting that the Senior Delegation of the Nationwide Ceasefire Coordination Team is headed by a woman,[20] women have largely been excluded from the negotiating teams. Nevertheless, women's contributions at the technical level, and their informal role as observers and advisers in drawing attention to women's concerns, should be commended. Greater efforts must be made to translate commitments into concrete actions and implement proactive measures to ensure women's full participation going forward. Women should be included in the envisaged Joint Monitoring Committee to be established at all levels, as well as in the Investigation and Verification Committee. Women's inclusion as members or heads of delegations, and as members of any task forces or technical committees to be formed, should also be ensured. Voluntary quotas for women could be considered in this regard. Political dialogue should specifically address women's rights issues and incorporate a gender perspective. Formal mechanisms for consultation with women's civil society organizations should be established.

F. Development, economic, social and cultural rights

59. The Special Rapporteur welcomes the Government's signature of the International Covenant on Economic, Social and Cultural Rights in July 2015 and hopes that it will be ratified promptly. She notes various measures taken to ensure

[19] Security Council resolutions 1325 (2000) and 1889 (2009).

[20] Naw Zipporah Sein, General Secretary of the Karen National Union.

affordable and accessible education, including the elimination of school and tuition fees at the primary, middle school and high school levels. She also welcomes the introduction of a mandatory minimum wage, which took effect on 1 September 2015. She notes, however, that more than 1,000 factory workers in the garment industry have reportedly been laid off as a result.

60. The 2014 census, the first in several decades in Myanmar, represents an important achievement. The Special Rapporteur notes that the main results, released in May 2015, can help target meaningful development initiatives and tackle regional inequalities. Yet, she regrets that more than 1 million people, many of them Rohingya from Rakhine State, were not included in the census. Additional data on ethnicity and religion will only be released in early 2016.

61. The Special Rapporteur continues to receive reports of forced evictions, land-grabbing and land confiscations carried out by the military and private actors for large-scale development projects, so-called "hotel zones", mining and other natural resource extractive industries. There is little or no consultation with affected communities and individuals, and often no compensation provided. She remains of the view that land issues will be one of the major challenges for Myanmar after the elections.

62. She notes the efforts of various government and parliamentary committees to investigate land-related complaints and return confiscated land. Yet, progress has been slow, particularly given the complex and fragmented legal framework on land issues. The Special Rapporteur has previously highlighted how existing laws, including the colonial Land Acquisition Act, the 2012 Farmland Law and the Vacant, Fallow and Virgin Land Law, give the Government discretion to confiscate land for projects deemed in the national interest. This framework is particularly problematic as many land users do not have formal land titles and customary land use and community-managed resources remain unrecognized. The Special Rapporteur welcomes the extended consultation process on the draft National Land Use Policy, as well as proposals to strengthen tenure for marginalized and vulnerable groups and recognition of customary land rights. Once adopted, the land policy will guide the drafting of an overarching land law. She hopes for a similarly consultative and transparent process for all changes to land-related legislation, which will be necessary to bring it in line with the new policy.

63. Given the impact of large-scale projects on communities across the country, environmental and social impact assessments should be consistently conducted in a transparent, rights-based manner with meaningful consultation and participation of all affected groups. The forthcoming Environmental Impact Assessment Procedure and Guidelines should explicitly refer to human rights standards and require assessments to address the rights implications of such projects. The Government should consider a moratorium on large-scale projects (similar to the Myitsone Dam decision of 2011), which have the potential to negatively impact human rights and on which there have been protests and public demonstrations. These include the controversial dam projects on the Salween River. This would allow the Government to obtain international advice, and review these projects against international standards.

64. The Special Rapporteur reiterates that a rights-based and people-centred approach is needed to ensure sustainable development. Development must also be transparent. She notes that Myanmar, as a "candidate" country for the Extractive

Industries Transparency Initiative, is currently preparing its first report due in January 2016. She hopes that it will implement the standards rigorously and comprehensively in all extractive industries, including the mining sector. This should increase transparency and improve the management of oil, gas and mineral resources for the benefit of all Myanmar's people.

65. Private companies have a responsibility not to cause or contribute to human rights abuses. This responsibility is particularly important given the growth in foreign investment. The Special Rapporteur thus reminds all investors and business enterprises in Myanmar of their responsibilities set out in the United Nations Guiding Principles on Business and Human Rights and encourages them to take all necessary steps to ensure effective implementation. She also encourages investors and business enterprises to abide by all other relevant voluntary standards such as the Voluntary Guidelines on Responsible Governance of Tenure of the Food and Agriculture Organization of the United Nations. The Special Rapporteur also encourages the application of the Principles for Responsible Contracts, a subset of principles under the United Nations Guiding Principles, when negotiating State-investor contracts. This would ensure that human rights risks arising from large-scale investment projects are effectively mitigated and addressed. Additionally, the draft Investment Law, which remains pending in Parliament, should include a requirement for investors to establish or participate in effective operational-level grievance mechanisms and to cooperate with any other relevant grievance procedures consistent with international procedures. Provisions should be included to allow sufficient flexibility for the Government to create policies aimed at protecting individual rights. She also encourages the Government to develop a National Action Plan on Business and Human Rights following consultation with relevant government departments, civil society and the private sector.

66. The Special Rapporteur remains concerned by reports of continuing intimidation, harassment and arrests of farmers and land-rights activists. Recent arrests indicate the use of a variety of charges against land-rights activists and protestors. This includes the arrest of 27 people in Karen State in June 2015 under article 43 (a) of the Forest Law for erecting huts on land they claimed to own; the arrest of activist Su Su Nway in July under trespassing charges for reportedly meeting farmers protesting against land confiscation by the military in Bago Region; and the arrest of activist Saw Maung Gyi in August under the Unlawful Associations Act for allegedly assisting someone from an armed group.

67. Also of concern are reports of the use of excessive force by security forces against peaceful protestors, such as the crackdown on the Letpadaung copper mine protest in December 2014, which resulted in one death and several injuries. The Special Rapporteur also notes with concern the use of force to disperse protest sites of the Michaungkan community in December 2014 and February 2015. The group was demanding the return of land allegedly confiscated by the military in the 1990s. There are14 others — currently on bail — still facing charges under article 18 of the Peaceful Assembly Law and article 68 of the Municipality Act.

G. Constitutional and legislative reform

68. The Special Rapporteur previously highlighted the need to reform constitutional provisions that do not comply with international standards (see A/HRC/28/72, and

A/69/398). Of particular concern are provisions setting out the process for amending the Constitution, the role and authority of the military, and the eligibility criteria for public office. She also reiterates the need to revise chapter VIII on fundamental rights, which currently subjects several rights to vague and subjective limitations (articles 354, 365 and 376), imposes problematic duties on individuals (article 383) and limits the applicability of many rights only to citizens (articles 354, 355 and 357).

69. Following public campaigns and efforts of a 31-member parliamentary committee on constitutional reform, five proposed amendments submitted to Parliament were ultimately rejected by vote in June 2015. They included a proposed change to article 436 to lower the percentage of parliamentarians required to approve a constitutional amendment from 75 to 70 per cent, and to article 59 (f) on the ineligibility for Presidential office of those with spouses and children of foreign nationality. Only an amendment to article 59 (d), replacing the word "military" by "defence" among the required areas of knowledge for presidential candidates, was adopted. A referendum on that amendment will take place after the elections.

70. The Special Rapporteur welcomes the continuing process of legislative reform, including steps taken by the Government to review and amend some laws that do not meet international human rights standards. She underscores that any law being revised or any bill being introduced in Parliament should fully conform with Myanmar's international human rights obligations. She also calls on the Government and Parliament to exercise utmost diligence in the adoption of new laws that have a serious bearing on human rights, such as the Prison Bill and the draft National Prevention of Violence against Women Bill currently under consideration.

71. At the same time, she notes continuing concerns that the legislative process remains opaque and does not systematically and consistently allow for consultation and discussion with relevant stakeholders, including civil society. Some interlocutors also expressed concern that draft laws that had undergone extensive consultation had been submitted to Parliament with key provisions and suggested language removed. Thus, even some revised laws still fall below international standards, while other newly enacted laws, notably the package of four "protection of race and religion" laws discussed in paragraph 76 below, clearly violate Myanmar's human rights obligations. This represents a major setback to the legislative reform process.

72. The Special Rapporteur recognizes the Government's effort to update media-related legislation. Recent laws include the 2014 News Media Law, the 2014 Printers and Publishers Registration Law and the recently passed 2015 Law Concerning Television and Radio Broadcasting (Broadcasting Law). Although they are an improvement, these laws still contain problematic provisions. The new Broadcasting Law, for example, does not sufficiently safeguard the independence of the National Broadcasting Council, members of which are appointed and can be removed by the President, and does not include a requirement to give reasons for refusal of a licence.

73. The Special Rapporteur commends the Government's efforts to review the Child Law (1993) and stresses the importance of its compliance with the Convention of the Rights of the Child, to which Myanmar is party. She reiterates the importance of implementing the Concluding Observations made by the Committee

on the Rights of the Child in 2012,[21] including by amending the definition of a child to any person below 18 years and raising the age of criminal responsibility from seven to an internationally acceptable level. The revised law should also strongly criminalize the recruitment and use of children in the armed forces and armed groups.

74. The current legal framework governing prisons in Myanmar is outdated and lacks fundamental safeguards. The Special Rapporteur thus welcomes the Government's commitment to draft a new Prison Law. Introduced in Parliament in July 2015, the Prison bill includes an explicit prohibition of torture and inhumane and degrading treatment. However, several areas still fall below international human rights standards, such as the United Nations Standard Minimum Rules for the Treatment of Prisoners and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders. In order to address these shortcomings, the law should include, for example, provisions mandating independent monitoring of prison conditions; clear limitations on the use of solitary confinement; prohibitions against fettering as a means of restraint; and amended provisions on the use of force by prison superintendents.

75. The Government is currently drafting a National Prevention of Violence against Women Bill. If compliant with its obligations under the Convention on the Elimination of Discrimination Against Women, this could represent a major step in the protection of women's rights in Myanmar. In this regard, the Special Rapporteur regrets that key provisions were being reconsidered or deleted during drafting. She highlights the importance of adopting a broad definition of rape; including a clear definition of aggravated sexual offences, which would address sexual violence in conflict; and allowing women to report violence freely and directly.

76. The Special Rapporteur strongly regrets the adoption between May and August 2015 of a legislative package of four laws that seek to "protect race and religion". Initiated by the ultranationalist Buddhist groups "969" and MaBaTha, these laws violate fundamental international human rights principles, including equality and non-discrimination. Since their introduction in Parliament in November 2014, the Special Rapporteur and other Special Procedures, have repeatedly raised serious concerns about the discriminatory impact of the Religious Conversion Law, the Population Control Healthcare Law, the Buddhist Women's Special Marriage Law and the Monogamy Law. Yet, they were all adopted by Parliament and signed by the President, who, in a video posted online, reportedly presented their adoption as a noteworthy achievement. The first case under the Monogamy Law was brought against a Muslim masonry worker cohabiting with a Buddhist woman. Charges were allegedly brought after MaBaTha members reported their cohabitation. If convicted, the accused risks up to seven years' imprisonment. Adopted a few months before the elections with a divisive and discriminatory intent, these laws not only violate Myanmar's international obligations but also risk enflaming religious and communal tension.

[21] CRC/C/MMR/CO/3-4.

III. Conclusions

77. After four years of far-reaching reforms that have undeniably improved the human rights situation, the importance of the upcoming elections for Myanmar's democratic transition cannot be overstated. The credibility of the elections will be judged by the environment in which they are conducted and the extent to which all sectors of Myanmar society have been allowed to freely participate in the political process. The disenfranchisement of certain communities and groups, particularly on discriminatory grounds, does not meet that test. Neither does the undermining of democratic space in which independent and critical voices face restrictions in the exercise of their rights to freedoms of expression, peaceful assembly and association. Instead, they are clear symptoms of ongoing human rights challenges that unfortunately continue to prevail in Myanmar. In the short time ahead of the elections, urgent steps should be taken to address these serious concerns if the country is to continue on the path of reform. The time after the elections will shape the future of Myanmar. The transition period will hopefully not be accompanied by instability, which could provide an environment for human rights abuses and violations.

78. The Special Rapporteur encourages the Government to reconsider its responses to critical and independent voices. Civil society actors, journalists and ordinary citizens exercising their rights to freedom of expression, assembly and association are not threats. Instead, their vital role in contributing to and sustaining a robust democracy should be embraced and supported.

79. The international community must remain constructively and critically engaged. It must continue to hold Myanmar accountable to its human rights commitments and obligations. It must support the Government, including through policy dialogue and technical assistance, in carrying out further reforms. Myanmar's upcoming Universal Periodic Review on 6 November 2015 will be an important opportunity to strengthen engagement and cooperation on human rights between the Government and the international community.

IV. Recommendations

80. **To ensure genuinely democratic elections that are free, fair, inclusive and transparent in line with international standards, the Government should:**

(a) **Immediately find solutions to allow all habitual residents of Myanmar, particularly former temporary registration card holders, displaced persons, refugees and migrant workers, to participate in the political process and to vote;**

(b) **Immediately, through the Union Election Commission, establish a process for an independent and thorough review of all candidate disqualifications;**

(c) **Ensure full respect for the rights to freedom of expression, assembly and association, and ease the arbitrary arrest and detention, as well as disproportionate sentences against those exercising these rights;**

(d) **Release all political prisoners, including peaceful protestors convicted under the Peaceful Assembly and Peaceful Procession Law and the**

Penal Code, as well as journalists convicted under outdated defamation, trespassing and national security laws;

(e) Promptly investigate and redress threats, acts of intimidation and harassment against media and civil society actors;

(f) Ensure that law enforcement officials do not use excessive or disproportionate force when managing protests;

(g) Ensure that instances of possible excessive or disproportionate use of force are investigated promptly and impartially;

(h) Take urgent steps to counter extremist nationalist sentiment in the country and take prompt action against all instances of hate speech and incitement to hatred and violence.

81. **More broadly, the Government should:**

(a) Resolve the citizenship status of habitual residents of Myanmar, including former Temporary Registration Card Holders, and ensure that they have equal access to citizenship through a non-discriminatory process;

(b) Amend the discriminatory 1982 Citizenship Law to bring it into line with international standards. In particular, remove any provisions that provide for the granting of citizenship on the basis of ethnicity or race;

(c) Review and further amend the Peaceful Assembly and Peaceful Procession Law and provisions in the Penal Code applicable to the exercise of the rights to expression, assembly and association, including articles 143, 145, 146, 147, 332 and 505 (b);

(d) Review and amend the Population Control Healthcare Act, the Women's Special Marriage Law, the Monogamy Law and the Religious Conversion Law to ensure their compliance with international human rights standards. Pending this, safeguard against any discriminatory effects in the implementation of the new laws;

(e) Ensure greater involvement by civil society and relevant stakeholders in legislative reform, including through inclusive consultation processes; and develop greater awareness-raising measures for draft and new laws;

(f) Develop comprehensive measures to address the root causes of discrimination against racial and religious minorities, as well as communal tension and violence, including through interfaith dialogue and confidence-building measures.

82. **Regarding Rakhine State, the Government should:**

(a) Respect the right to self-identification according to international human rights law, including in the citizenship verification process;

(b) Ensure access to adequate health, education and other basic services for all displaced persons without discrimination;

(c) Lift the restrictions on freedom of movement;

(d) Lift travel restrictions preventing Rohingya students from attending university;

(e) Review and revise all local orders, instructions and other policies and practices that are discriminatory in law and practice;

(f) Address long-standing social and economic development challenges through a human-rights-based approach, while ensuring the participation of affected communities.

83. **Regarding conflict-related human rights concerns, the Government should:**

(a) In conflict-affected areas, ensure that all parties adhere to international humanitarian and human rights law, and ensure the protection of civilians;

(b) Ensure that the United Nations and its partners have regular, independent and predictable access to all those in need of humanitarian assistance;

(c) End all child recruitment in the armed forces through strengthened recruitment procedures, age verification mechanisms and independent monitoring and oversight of all armed forces. Release all children currently in the armed forces and armed groups, and expedite ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;

(d) Ensure prompt, independent and impartial investigations into allegations of human rights violations committed in conflict areas, and the prosecution and punishment of all perpetrators;

(e) Ensure that complainants are not penalized or threatened with legal action for bringing complaints and seeking redress against violations committed by the military;

(f) Ensure full consultation with local and affected communities, civil society, and women, as well as their full participation in the peace process, including implementation and monitoring mechanisms, and any future political dialogue.

84. **To ensure a rights-based and people-centred form of sustainable development and the protection of economic, social and cultural rights, the Government should:**

(a) Ensure that environmental and social impact assessments of large-scale development projects are always undertaken with a strong human rights focus, implement their recommendations and make all relevant information publicly accessible;

(b) Undertake further reform of legislation and institutional frameworks governing land use and management, resource management and -sharing, and land tenure, in line with international standards;

(c) Proactively ensure participatory, inclusive and meaningful consultations on land development and that comments received are properly considered;

(d) Consider developing a National Action Plan on Business and Human Rights, engaging civil society and the private sector in a transparent consultation process;

(e) Ensure that people protesting land confiscations and development projects are not subjected to intimidation and arbitrary arrest, and excessive use of force by police.

85. **Regarding international cooperation, the Government should:**

(a) Continue to engage constructively with the international human rights system, including in the upcoming second round of the Universal Periodic Review;

(b) Expedite the establishment of an office of the United Nations High Commissioner for Human Rights in Myanmar with a full mandate.